IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1810 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANUBHAI PARBHUBHAI & 3 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR JOY MATHEW for Petitioner No(s).: 1 - 1.
MR MR MENGDEY, AGP for Respondent No(s).: 1,1-A and 2

Mr ADIL MEHTA for Respondent No(s).: 3.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 04/07/2005

ORAL JUDGMENT

Learned advocate for the petitioners seeks permission to join the Collector, Narmada District as party respondent No.1-A. Permission granted.

2. Rule. Learned AGP Mr.Mengdey waives service of notice of rule on behalf of respondent Nos.1,1-A and 2 and Mr.Adil Mehta waives service of rule on behalf of respondent No.3. At the joint request of the learned advocates appearing for the parties,the petition is taken up for final disposal today.

3. There is a long history leading to the present petition. However, taking note of only the relevant leading facts, it appears that the petitioners are heirs of deceased Surajben who was a tribal and who possessed certain piece of land bearing survey No.256 of Rajpipla town. There was an alleged sale deed by late Surjben in favour of respondent No.3 on 16.4.93. In view of the fact that the seller was a tribal, the authorities initiated proceedings under section 73AA of the Bombay Land Revenue Code finding that the sale in question was in favour of a non-tribal and the sale was without previous sanction from the Collector. Eventually, the sale was declared as ineffective by the Collector by the order dated 30th November 1996. Respondent No.3 challenged the said order passed by the Collector before the Joint Secretary, Revenue Department. Her appeal, however, came to be rejected by an order dated 6.6.2003. The petitioner approached this Court by filing Special Civil Application

No.3123/04 mainly contending that while disposing of the proceedings, the authorities ought to have taken action in terms of sub-section (5) of section 73AA of the Bombay Land Revenue Code and should have issued a notice to the petitioners calling upon the petitioners to state whether they are willing to purchase the occupancy and cultivate the land personally. This Court disposed of the said Special Civil Application by the order dated 9.7.2004 remanding the proceedings to the Secretary (Appeals), requiring him to decide the question of giving opportunity to the petitioners under section 73AA(5) of the Bombay Land Revenue Code. Pursuant to the remand, the Additional Secretary once again by the order dated 22.9.04, disposed of the proceedings confirming the earlier orders without going into the question of applicability of section 73AA(5) of the Bombay Land Revenue Code. The petitioners have, therefore, filed the present petition mainly on the ground that the land having been vested in the Government, the petitioners should be given an opportunity to show their willingness to purchase the occupancy.

4. From the above narration, it is clear that the transaction in question was declared invalid by the Collector which finding was upheld by the Joint Secretary in an appeal filed by respondent No.3, the purchaser of

the land in question. No further proceedings were carried by respondent No.3 against the order of the Joint Secretary passed on 6.6.2003. The question of validity of the sale transaction, therefore, achieved finality by the order passed by the Joint Secretary on 6.6.2003. When the sale was finally declared ineffective and the land was ordered to vest in the State Government, further proceedings under sub-section (5) of section 73-AA ought to have been initiated by the authorities. The Collector, therefore, ought to have initiated proceedings under section (5) of section 73-AA and ought to have issued notices to the petitioners as provided in the said sub-section. That not having been done, it is necessary to direct the Collector to initiate appropriate proceedings calling upon the petitioners to indicate whether they are willing to purchase the occupancy as provided in sub-section (5) of section 73-AA of the Bombay Land Revenue Code.

5. In view of the above discussion, while disposing of the present petition, respondent No.1-A is directed to take further action in terms of sub-section (5) of section 73-AA of the Bombay Land Revenue Code bearing in mind the observations made herein above in this order. With these directions, the petition is disposed of. Rule is made

absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)